



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2012-0233; FRL-9700-7]

Extension of Deadline for Promulgating Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of deadline for promulgating designations.

SUMMARY: The EPA is announcing that it is using its authority under the Clean Air Act (CAA) to extend by up to 1 year the deadline for promulgating initial area designations for the primary sulfur dioxide (SO₂) national ambient air quality standard (NAAQS) that was promulgated in June 2010. With this extension, the EPA is now required to complete initial designations for this NAAQS by June 3, 2013.

DATES: The new deadline for the EPA to promulgate designations for the 2010 primary SO₂ NAAQS is June 3, 2013.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Rhonda Wright, Air Quality Policy Division, Office of Air Quality Planning and Standards, Mail Code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919-541-1087; fax number: 919-541-0824; email address: wright.rhonda@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include state, local, and tribal governments that would participate in the initial area designation process for the 2010 SO₂ standard.

B. Where can I get a copy of this document and other related information?

The EPA has established a docket for designations for the 2010 SO₂ NAAQS under Docket ID No. EPA-HQ-OAR-2012-0233. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

An electronic copy of this document is also available at www.epa.gov/so2designations.

II. Background

A. Area Designation Requirements

On June 2, 2010, the EPA Administrator signed a notice of final rulemaking that revised the primary SO₂ NAAQS (75 FR 35520, published on June 22, 2010) after review of the existing two primary SO₂ standard promulgated on April 30, 1971 (36 FR 8187).¹ The EPA established the revised primary SO₂ NAAQS at 75 parts per billion (ppb) which is attained when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations does not exceed 75 ppb. The EPA determined in that rulemaking that this is the level necessary to provide protection of public health with an adequate margin of safety, especially for children, the elderly and those with asthma. These groups are particularly susceptible to the health effects associated with breathing SO₂.

After the EPA establishes or revises a NAAQS pursuant to CAA section 109, the CAA directs the EPA and the states to begin taking steps to ensure that those NAAQS are met. The first step is to identify areas of the country that do or do not meet the new or revised NAAQS. This step is known as the initial area designations. Section 107(d)(1) of the CAA provides that, "By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised NAAQS for any pollutant under section 109, the Governor of each state shall . . . submit to the Administrator a list of all areas (or portions thereof) in the state" that designated those areas as nonattainment, attainment, or unclassifiable. The CAA defines an area as nonattainment if it is violating the NAAQS or if it is contributing to a violation in a nearby area. *See* CAA section 107(d)(1)(A)(i).

¹ Although the notice was signed on June 2, 2010, it was not publicly distributed until the next day, June 3, 2010. The EPA generally regards "promulgation" for public notice purposes to mean signature of a final rule combined with its public dissemination. For purposes of CAA section 107(d)(1), therefore, which imposes deadlines tied to the promulgation of the NAAQS for states to submit designations recommendations and for the EPA to promulgate designations, the EPA interprets the promulgation date of the 2010 primary SO₂ NAAQS to be June 3, 2010.

The CAA further provides, "Upon promulgation or revision of a NAAQS, the Administrator shall promulgate the designations of all areas (or portions thereof) . . . as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised NAAQS. Such period may be extended for up to 1 year in the event the Administrator has insufficient information to promulgate the designations." *See* CAA section 107(d)(1)(B)(i).

After the states submit their recommendations, but no later than 120 days prior to promulgating designations, the EPA is required to notify a state of any intended modifications to the state's recommended designation. The state then has an opportunity to demonstrate why any proposed modification is inappropriate. Whether or not a state provides a recommendation, the EPA must promulgate the designation that the agency deems appropriate within two years of promulgation of the NAAQS (or within 3 years if the EPA extends the deadline).

For the June 2010 SO₂ NAAQS, the deadline for states to submit designation recommendations to the EPA for their areas was June 3, 2011. The EPA has been evaluating these recommendations and conducting additional analyses to determine whether it is necessary to modify any of the state recommendations. The EPA was originally intending to complete the initial designations for the 2010 SO₂ NAAQS on a 2-year schedule, by June 3, 2012. We explained this intent in the preambles to the notices of proposed and final rulemakings for the revised SO₂ NAAQS, and in subsequently issued guidance documents suggesting how states could develop their designations recommendations and how they could develop and submit state implementation plans (SIPs) for attainment, maintenance and enforcement of the NAAQS. We received numerous comments in response to our guidance, including suggestions that we take the extra year allowed under the CAA to issue designations where insufficient information exists,

and, for the reasons discussed below, we are persuaded that it is more reasonable to take extra time allowed in these circumstances, a year or less as appropriate, rather than to proceed with our prior intention to issue designations by June 3, 2012.

B. Summary of Designations Guidance Provided in the Proposed and Final SO₂ NAAQS Preambles and in the March 2011 and September 2011 Memoranda

We first explained our intentions for designations under the new SO₂ NAAQS in the preamble to the proposed NAAQS rule, published in the *Federal Register* on December 8, 2009 (74 FR 64810). In the proposal, we explained that since the new SO₂ ambient monitoring network and any newly sited monitors would not be generating sufficient monitoring data in time to inform the EPA decisions on designations, even if the EPA took an extra year, we intended to issue initial area designations on a 2-year schedule, by June 2012, based on 3 years of complete, quality assured, certified air quality monitoring data from the pre-existing monitoring network (74 FR 64858). We then expected to base designations on air quality data from the years 2008-2010 or 2009-2011, using hourly reported data from existing monitors, and to designate as nonattainment any area with a monitor indicating a violation of the 1-hour SO₂ NAAQS, regardless of whether that monitor is located such that it could be counted towards meeting the proposed new network requirements (74 FR at 64859). The EPA further explained, however, that if the monitor indicates that the monitoring site meets the 1-hour SO₂ NAAQS, the EPA's designation decision would be made on a case-by-case basis, including possibly an unclassifiable designation due to the EPA being unable to determine, due to lack of data, whether the area is violating the NAAQS or is contributing to a violation in a nearby area (74 FR 64859).

In the published June 22, 2010, final NAAQS rulemaking preamble, partly in response to comments on the proposal, the EPA described a different intended approach to issuing initial

area designations in order to make it more consistent with what we then described as our historical approach to implementing the prior SO₂ NAAQS (75 FR 35550). For designations, we indicated that approach would rely upon both monitoring data from the existing SO₂ network for the years 2008-2010, as well as any refined SO₂ dispersion modeling for sources that may have the potential to cause or contribute to a NAAQS violation, provided that it is recent and available (75 FR 35569). Under this approach, the EPA would designate as nonattainment an area that has monitoring or refined modeling results showing a NAAQS violation, and as attainment an area that has both monitoring data and appropriate modeling results showing no violations (75 FR 35569). In general, other areas, including those with SO₂ monitors showing no violations but without modeling showing no violations, the EPA would designate as unclassifiable (75 FR 35569). However, the EPA further explained that it anticipated making determinations of when monitoring alone could be appropriate to support a designation for a specific area on a case-by-case basis, informed by the area's factual record and after examining the historic treatment of the area with respect to prior SO₂ designations as well as whether the area is one in which monitoring would be the more appropriate technical tool for determining attainment of the 1-hour NAAQS (75 FR 35552).

The final NAAQS preamble also explained that the EPA received comments expressing concerns with the perceived burdens of implementing the proposed monitoring network as well as the sufficiency of its scope for purposes of identifying NAAQS violations (75 FR 35570). Some of these commenters suggested using modeling to determine the scope of monitoring requirements, or favored modeling over monitoring to determine attainment of the NAAQS (75 FR 35570). In response to these commenters, we explained our modified expectations at that time for issuing designations, as well as our intention to issue further modeling guidance (75 FR

35570). However, as we expected that it would take some time to issue guidance, and that modeling several hundred sources would represent a substantial burden, we clarified that we did not expect states to complete such modeling and incorporate their results in designations recommendations due in June 2011 (75 FR 35570). Rather, we expected states would generally submit designations recommendations of unclassifiable, and that most areas' informational records would be insufficient to support initial designations of either attainment or nonattainment (75 FR 35571).

In March 2011, the EPA then issued a memorandum, included in the docket for today's extension, providing non-binding guidance on designations for the 2010 primary SO₂ NAAQS, including modeling guidance (March 2011 Guidance). In this guidance, the EPA stated its intention at that time to promulgate initial designations for this standard within 2 years from the promulgation of the NAAQS (*i.e.*, by June 3, 2012). (March 2011 Guidance at pp. 1-2.) Under the CAA, states were to submit their primary SO₂ NAAQS designation recommendations to the EPA by June 3, 2011. The EPA stated in its guidance that if the EPA intends to modify any state's recommendation, the EPA will notify the state no later than 120 days prior to the EPA's action to promulgate designations (*i.e.*, by February 3, 2012, for designations then expected to be promulgated by June 3, 2012). The EPA again explained that in general, due to an expected absence of monitoring or modeling information showing whether areas were meeting or not meeting the revised NAAQS, most areas would likely be initially designated as unclassifiable (March 2011 Guidance at p. 2).

In this March 2011 Guidance, the EPA also discussed a suggested analytic approach that would use both air quality monitoring and modeling information (a "hybrid" modeling and monitoring approach) to determine if an area meets or does not meet the 2010 primary SO₂

NAAQS initially described in the preamble for the June 2010 primary SO₂ NAAQS. Under such an approach, areas would generally be designated as: 1) nonattainment, where monitoring data or an appropriate modeling analysis or other appropriate information indicate a violation; 2) attainment, where there are no monitored violations and an appropriate modeling analysis or other appropriate information demonstrate no violations; or 3) unclassifiable, where there are no monitored violations and no appropriate modeling analysis or other appropriate information sufficient to support an alternate designation (March 2011 Guidance at pp. 3-5). The March 2011 Guidance also explained that given the currently limited network of SO₂ monitors and our expectation that states will not yet have completed appropriate modeling of all significant SO₂ sources, we anticipated that most areas of the country will be designated “unclassifiable.”

In September 2011, the EPA issued a draft guidance document on SIP submissions for the 2010 primary SO₂ NAAQS (September 2011 Draft Guidance). The EPA published a notice of availability of this draft guidance in the *Federal Register* on October 3, 2011 (76 FR 61098). The EPA invited public comment on this draft document from October 3, 2011, to December 2, 2011 (76 FR 66925; October 28, 2011). This draft document includes guidance on how states could support future NAAQS attainment demonstrations in SIPs using a hybrid modeling and monitoring approach.

The EPA received several comments questioning the appropriateness of using the hybrid modeling and monitoring approach to demonstrate attainment of the SO₂ NAAQS. (See comments at Docket ID No. EPA-HQ-OAR-2010-1059.) Although the September 2011 Draft Guidance did not specifically address designations, commenters expressed their concerns regarding the hybrid approach both for initial designations purposes as well as for future SIP planning and attainment demonstration purposes. These concerns included, for example, industry

sources and state regulators not having adequate time to conduct modeling to inform either designations recommendations that were due in June 2011 or SIP submissions due under the CAA in June 2013. Even in areas that may have monitored violations of the primary NAAQS, some commenters asserted uncertainty from where contributions to those violating ambient concentrations were coming.

Commenters claimed that the EPA's guidance to date did not sufficiently enable sources and states to fully identify nearby contributing areas or determine the boundaries of possible nonattainment areas. Consequently, these commenters urged the EPA to take the additional time allowed under the CAA in situations where available data is insufficient before issuing initial designations and use that additional time to further refine and improve the EPA's expected overall approach to implementing the 1-hour SO₂ NAAQS for both current conditions influencing initial designations and future conditions supporting SIP attainment demonstrations.

Subsequently, in April 2012, the EPA's Assistant Administrator for Air and Radiation sent letters to representatives of state and local government and tribal agencies that described the EPA's modified expectations regarding some SO₂ implementation aspects, and that reiterated the agency's intent to proceed with initial area designations as expeditiously as possible given available data. (*See sample letters at www.epa.gov/airquality/sulfurdioxide/implement.html.*) Then, in late May and early June 2012, the EPA held numerous meetings with environmental advocacy, state and local government, and industry stakeholders regarding the EPA's overall implementation approach to the 2010 primary SO₂ NAAQS, and in these discussions stakeholders repeated their concerns and suggestions regarding designations, including the recommendations to take the extra time allowed under CAA section 107 where insufficient data is available. In addition, the EPA has publicly distributed a "white paper" raising for discussion

possible alternative implementation approaches to those that were presented in the September 2011 Draft Guidance. (See “*White Paper*” at www.epa.gov/airquality/sulfurdioxide/implement.html.) The EPA has recently received numerous comments on the “white paper” and on the stakeholder discussions, several of which also address designations and which recommend taking additional time to promulgate them. Some of these comments also suggest that the EPA should significantly revise the modeling guidance contained in the March 2011 Designations Guidance, to account for the 1-hour form of the 2010 SO₂ NAAQS, as some commenters believe that the current approved modeling protocol is not well suited for use in designations for the 1-hour NAAQS.

The EPA is still reviewing comments and has not yet determined whether to revise its overall approach for issuing initial designations. At the same time, the EPA has also received a notice of intent to sue from environmental advocacy stakeholders under CAA section 304(a)(2) for having missed the June 3, 2012, statutory deadline for issuing designations that applies in the absence of a determination by the EPA to take the extra year allowed under CAA section 107 based on insufficient data.

III. Extension of Deadline for Promulgating Designations for the 2010 NAAQS

In light of the comments received on the September 2011 Guidance, including those regarding the timing and approach for issuing initial area designations, and the subsequent comments received as part of the stakeholder outreach process in May and June 2012, the EPA acknowledges that it remains significantly uncertain what analytic approach sources, states, and the EPA will consistently and cooperatively use to make the determinations required under the CAA with respect to both current and future air quality. Because the issues involved, and the comments received on the draft guidance, relate to determinations of both the boundaries of

areas currently meeting or not meeting the NAAQS and whether such areas will or will not meet the NAAQS in the future, the EPA agrees that it should make effective use of the additional time allowed under the CAA to promulgate designations. The EPA has insufficient data at this time to promulgate designations, including where it is necessary to identify nearby contributing areas and to determine boundaries of possible nonattainment areas, which the EPA cannot expect to definitively determine with full cooperation of stakeholders in advance of resolving outstanding issues and uncertainty regarding the most appropriate implementation approach, including determining whether an area meets or does not meet the new NAAQS. Therefore, the EPA concludes that it currently has insufficient information to promulgate designations by June 2012, and intends under these circumstances to take additional time, up to 1 additional year, allowed under the CAA for promulgating initial designations for the 2010 primary SO₂ NAAQS.

By taking the additional time, the EPA is now required under CAA section 107 to promulgate designations by June 3, 2013. The EPA expects to take additional time, as necessary, to appropriately assess designations. For some areas, EPA anticipates it will not be necessary to take the full additional year, and in those cases EPA will proceed sooner than June 2013. For example, the EPA intends to make its best effort to promulgate final designations for areas with monitored violations of the SO₂ NAAQS by the end of calendar year 2012, subject to being able to resolve issues related to nonattainment boundary determinations and contributions from nearby areas, rather than take until June 2013 for those areas. The EPA believes this deadline extension is appropriate because the continued uncertainty regarding the overall analytic approach to determining an area's compliance status affects not only the initial identification of nonattainment areas, but also the appropriate nonattainment area boundaries,

which involves clearly identifying nearby areas that are (and are not) contributing to violations. The EPA expects to resolve these outstanding issues this year, and, once resolved, will proceed expeditiously to complete the designations process.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 27, 2012

Lisa P. Jackson,
Administrator.

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